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COMPROMISES MADE ON HOUSE BILL 4561

COMPROMISES IN THE HOUSE

As introduced, HB 4561 would have only allowed the construction code to be updated once every six years. A compromise was reached to allow the code to be updated either every three years or every six years as the director determines appropriate. The H-1 substitute, passed by the House 68 to 39, contains that compromise.

As introduced, HB 4561 would have prevented codes being adopted "by reference" and required them to be published in the same manner a bill is in order to be adopted. A compromise was reached to allow the codes to be adopted by reference. The H-1 substitute passed by the House contains that compromise.

As introduced, HB 4561 would have required Michigan to continue to use the Michigan Uniform Energy Code (MUEC) and not the International Energy Conservation Code (IECC). A compromise was reached to replace the MUEC with the IECC in the list of codes the director may adopt by reference. The H-1 substitute passed by the House contains that compromise.

As introduced, HB 4561 would have restricted the use of product, materials or methods of construction found in an unadopted edition of a code used in Michigan until a new edition of that code was adopted. A compromise was reached that automatically allows for the voluntary use of new products and technologies provided for in an interim edition of one of the listed codes used by the state without any further need for testing or state approval, even if the state skips that edition. Building departments may not mandate these uses. The H-1 substitute passed by the House contains that compromise.

COMPROMISES IN THE SENATE

In the Senate S-1 substitute:

All commercial construction codes (Building, Electrical, Mechanical, Plumbing, Energy and Rehabilitation for Existing Buildings) remain on the current three-year cycle. Only the Michigan Residential Code and all its components (structural, electrical, mechanical, plumbing, & energy) will go to the flexible cycle.

Before making a decision on updating the residential code, the director of LARA will be required to hold a public meeting in Lansing to allow people to present data and comments on the general need to update the Michigan Residential Code. The director is required to hold the public meeting must within 200 days of the publication of the International Residential Code by the International Code Council and notice of the meeting must posted on the department website 30 days before the meeting takes place.

The director is required to make a written determination on updating the Michigan Residential Code. The determination must be made not more than 30 days after the public meeting and the department must post the determination on its website for at least 45 days.

If the director makes the determination not to update the Michigan Residential Code there is a 45-day period for a person to request the director begin promulgation of a rule to amend a section or sections of the Michigan Residential Code.

Within 90 days after the filing of a request the director shall either initiate the processing of a rule or send the person requesting the rules a concise written statement of the principal reasons for denial of the request. If the request is denied, the denial statement must be posted on the department's website until the Michigan Residential Code is next updated.

The House compromise that automatically allows for the voluntary use of new products and technologies provided for in an interim edition of one of the listed codes used by the state without any further need for testing or state approval has been refined to make it clear if such a product it used the building department may require it complies with all of the applicable requirement for its safe use that are set forth in the interim edition of the code.

Michigan Residential Code Promulgation Flowchart

International Code Council publishes latest edition of the International Residential Code (IRC)

After publication of the IRC, LARA director has not more than 200 days to hold a public meeting in Lansing on the need to update the Michigan Residential Code (MRC)
[The director must post notice of the meeting on LARA website 30 days in advance]

Not more than 30 days after the meeting the director shall issue a written determination of the decision whether to update the MRC.
[Notice of the determination must remain on department website for at least 45 days]

Director determines an update is appropriate

Director determines an update is not appropriate

MRC update begins

Within 45 days of the decision being posted, a person may request the director to amend a section or sections of the MRC. Within 90 days after the filing of a request:

The director shall initiate the processing of a rule

The director shall provide the requestor with a written statement for the denial of the request.

[A denial statement shall be posted on the department's website until the residential code is next updated.]

The Michigan Residential Code

How does the Michigan Residential Code differ from the non-residential construction codes we use in Michigan?

Each of the non-residential codes (Building, Mechanical, Fuel Gas, Plumbing, Electrical and Energy) regulates a specific segment of construction. If you want to know what the electrical requirements are you go to the electrical code, energy requirements the energy code and so on. No one code book contains all of the code requirements to build a non-residential structure.

By deliberate design, the Michigan Residential Code (and the International Residential Code it is modeled after) is a *"complete and comprehensive code regulating the construction of single-family houses, two-family houses (duplexes) and buildings consisting of three or more townhouse units."* It contains all of the code requirements for all components of a house or townhouse, including structural components, fireplaces and chimneys, thermal insulation, mechanical systems, fuel gas systems, plumbing systems and electrical systems.

The Michigan Residential Code is *"the complete cookbook for residential construction."* One of the major benefits of having a separate and comprehensive code for residential construction is that the user doesn't have to wade through six different code books and their non-residential provisions to learn what code requirements must be met to build a house. The residential code is presented in an ordered format that is consistent with the normal progression of construction starting with the design phase and continuing through the final trim-out phase. Having this separate code also allows for residential and non-residential codes provisions to be distinct and tailored to the structures the code regulates.

Equally as important, each part and chapter of the residential code is designed to mesh with the other parts and chapters. As an example, Chapter 6 of the residential code which regulates wall construction and Chapter 9 which regulates roof assemblies are designed to work with Chapter 11 which regulates Energy Efficiency. This assures the walls and roofs will be built with the proper provisions for the insulation required by Chapter 11.

Because each residential code requirement is considered in conjunction with all other residential requirements, and all are updated at the same time, conflicts between the requirements are avoided. Updating requirements such as energy efficiency or electrical systems on an individual, non-coordinated basis would mean the code requirements would no longer be written to work together.

What happens when someone is building a home using a technology the Michigan Residential Code doesn't cover?

The Michigan Residential Code is intended to cover conventional and common residential construction practices and might not address situations that are not typical of residential construction. Numerous sections throughout the residential code refer to other

The National Electrical Code

How much influence do manufacturers have on what products are allowed or required for use in the National Electrical Code?

Quite a lot. Manufacturers of products regulated by the NEC are given seats on the various code-making panels, although not on the code-making panel considering their product. These panels make the initial decision on what products are allowed or required for use under the NEC.

"Of the 5,077 proposed changes to the 2011 NEC, 4,093 proposals came from industry, and not from the code panels."

The above statement was made at a September 1, 2011 speech to the Mid- and West Michigan Construction Alliances by Tom Bowes the assistant director of IBEW Local 58/NECA JATC and a board member of the Michigan Chapter of the International Association of Electrical Inspectors.

In his speech, Mr. Bowes went on to outline his opposition to HB 4561 because it would "...cause code changes to be at the discretion of the Bureau of Construction Codes and the Legislature, rather than under the aegis of private industry."

In his testimony to the House Regulatory Reform Committee Mr. Bowes wrote "Re-reviewing each and every code change in all of the various building codes after competent national organizations have invested many private industry hours and financial resources in the code update process is a waste of Michigan taxpayer dollars. ... It is the job of private industry, and not the government, to determine when the code has reached the point to warrant change." (Tom Bowes International Brotherhood of Electrical Workers and Board member of the Michigan Chapter of International Electrical Inspectors in written testimony submitted to the House Regulatory Reform Committee October 14, 2011.)

"These decisions should not be left up to the discretion of regulators and legislators who do not have the expertise to deal effectively with the technical aspects of the code."
(Tom Bowes)

Aren't the manufacturers and private industry in the best position to know when the mandatory use of a product needs to be included in the code?

When voluntary installation of Arc-fault Circuit Interrupters (AFCIs) lagged, the NEC was amended to mandate their use in all homes; first in the 2002 NEC by requiring AFCIs to be installed on all electrical circuits serving bedrooms and then in the 2008 NEC by requiring AFCIs on all electrical circuits in a house.

The 2003 Michigan Residential Code requirement for arc-fault circuit interrupters (AFCIs) on all branch circuits serving bedroom outlets was justified solely on the basis of